

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**  
*See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.*

**FILED BY CLERK**

**JUL 26 2011**

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

ROSENDO CRISTOBAL VALENZUELA,

Appellant.

)  
)  
) 2 CA-CR 2010-0134  
) DEPARTMENT B  
)

MEMORANDUM DECISION

) Not for Publication  
)

) Rule 111, Rules of  
) the Supreme Court  
)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20074036

Honorable Michael J. Cruikshank, Judge

AFFIRMED

---

Thomas C. Horne, Arizona Attorney General  
By Kent E. Cattani and Aaron J. Moskowitz

Phoenix  
Attorneys for Appellee

Isabel G. Garcia, Pima County Legal Defender  
By Robb P. Holmes

Tucson  
Attorneys for Appellant

---

V Á S Q U E Z, Presiding Judge.

¶1 After a jury trial, Rosendo Valenzuela was convicted of first-degree murder, armed robbery, kidnapping, theft of a means of transportation, and theft by control. The trial court sentenced him to concurrent terms of imprisonment, the longest of which was life with the possibility of parole after twenty-five years.<sup>1</sup> On appeal, Valenzuela contends the court erred in denying his motion to suppress his statement to detectives and in precluding his mental-health expert from testifying about the voluntariness and reliability of the statement. For the reasons stated below, we affirm.

### **Factual and Procedural Background**

¶2 “We view the facts and all reasonable inferences therefrom in the light most favorable to upholding the jury’s verdicts.” *State v. Paredes-Solano*, 223 Ariz. 284, ¶ 2, 222 P.3d 900, 902 (App. 2009). In the spring of 2007, M. hired Valenzuela and his brother-in-law, Armando Estrada, to clean property she owned outside Tucson. In late May, following an argument over pay, Estrada and Valenzuela beat M. with a concrete paving brick and placed her, still alive, in her pickup truck. They drove her to a remote section of another property she owned and left her to die in the bathtub of a vacant trailer. They then took her truck, which they later abandoned in a parking lot, and used her debit card to withdraw approximately \$300 from her bank account. About two weeks later, Pima County Sheriff’s deputies, responding to a “check welfare” request, searched for M. and found her decomposing body in the trailer.

---

<sup>1</sup>Valenzuela also was charged with conspiracy to commit first-degree murder, but the jury acquitted him of this charge.

¶3 On October 11, 2007, Pima County Sheriff’s detectives interviewed Estrada, who eventually confessed to the murder. Immediately after concluding that interview, the detectives drove to the prison facility in Florence, where Valenzuela was being held on an unrelated matter, to interview him. The interview with Valenzuela began around 12:30 a.m. Valenzuela waived his rights after receiving the *Miranda*<sup>2</sup> warnings and agreed to answer questions. Valenzuela initially denied knowing M., but admitted he knew her when the officers told him Estrada had told the officers “exactly what happened” with M. and had “dumped everything on [Valenzuela].”

¶4 During the interview, Valenzuela told several versions of what had happened on the day of the murder. He first stated he knew Estrada had killed M. but he had not seen it happen. He then claimed he merely was a bystander while Estrada killed M. and disposed of her body. Valenzuela finally admitted to helping Estrada hide the body in a vacant trailer after Estrada had beaten M., though he still denied participating in the attack. He stated that M. may have been alive when they left her, and he admitted to driving M.’s truck away from the trailer and abandoning it in a parking lot.

¶5 Valenzuela was charged with first-degree murder, conspiracy to commit first-degree murder, armed robbery, kidnapping, theft of a means of transportation, and theft by control.<sup>3</sup> The state originally filed notice of its intent to seek the death penalty. The trial court ordered the notice dismissed, however, after a competency hearing at which it determined Valenzuela had an intelligence quotient (IQ) of less than 70 which,

---

<sup>2</sup>*Miranda v. Arizona*, 384 U.S. 436 (1966).

<sup>3</sup>Estrada also was charged, and the trial court severed his case from Valenzuela’s.

according to testimony, placed him in “the second percentile or at the bottom of the borderline range of intellectual function.” Valenzuela was convicted and sentenced as described above. This appeal followed.

## Discussion

### Motion to Suppress

¶6 Valenzuela first argues the trial court erred in denying his motion to suppress his statement to detectives.<sup>4</sup> He contends his low level of intelligence, coupled with the detectives’ decision to “conduct[] the interview at 12:30 a.m. after awakening [him] from his sleep,” rendered his statements involuntary.<sup>5</sup>

¶7 We review the denial of a motion to suppress a defendant’s statements to police “for ‘clear and manifest error,’ the equivalent of abuse of discretion,” *State v. Mendoza-Ruiz*, 225 Ariz. 473, ¶ 6, 240 P.3d 1235, 1237 (App. 2010), *quoting State v. Newell*, 212 Ariz. 389, ¶ 22 & n.6, 132 P.3d 833, 840 & n.6 (2006), but review the

---

<sup>4</sup>Valenzuela also argues the admission of his statements “violated the due process clauses of the United States and Arizona Constitutions.” But, because he does not develop this argument, we do not address it further. *See* Ariz. R. Civ. App. P. 13(a)(6) (appellant’s brief must contain argument with “citations to the authorities, statutes and parts of the record relied on”); *see also Carillo v. State*, 169 Ariz. 126, 132, 817 P.2d 493, 499 (App. 1991) (“Issues not clearly raised and argued on appeal are waived.”).

<sup>5</sup>The state argues Valenzuela has waived his voluntariness argument for all but fundamental, prejudicial error because, at the suppression hearing, he “specifically instruct[ed] the trial court *not* to review the recording of the interview beyond the initial *Miranda* warnings.” We disagree. When the court asked defense counsel if it was necessary to listen to the tape, defense counsel responded, “I think it’s important to listen to . . . [t]he first two minutes. That’s the *Miranda* warning.” This does not constitute waiver and, as the state concedes, Valenzuela raised the voluntariness issue below. And the trial court, having heard testimony both from Valenzuela and the interviewing detective, had ample evidence on which to base its decision, with or without the tape recording.

court's legal conclusions de novo, *State v. Gay*, 214 Ariz. 214, ¶ 4, 150 P.3d 787, 791 (App. 2007). In so doing, we review only the evidence presented at the suppression hearing and review it in the light most favorable to upholding the court's ruling. See *State v. Szpyrka*, 220 Ariz. 59, ¶ 2, 202 P.3d 524, 526 (App. 2008).

¶8 “The state has the burden of proving by a preponderance of the evidence that [a defendant]’s statements were voluntary.” *State v. Stanley*, 167 Ariz. 519, 523, 809 P.2d 944, 948 (1991). “In determining whether the state has met that burden, courts must look to the totality of the circumstances surrounding the giving of the confession.” *Id.* at 524, 809 P.2d at 949. Police coercion “‘is a necessary predicate to the finding that a confession is not voluntary.’” *Gay*, 214 Ariz. 214, ¶ 40, 150 P.3d at 798, *quoting Colorado v. Connelly*, 479 U.S. 157, 167 (1986). “When evaluating coercion, the defendant’s physical and mental states are relevant to determine susceptibility to coercion, but alone are not enough to render a statement involuntary.” *State v. Smith*, 193 Ariz. 452, ¶ 14, 974 P.2d 431, 436 (1999). “We look to the circumstances surrounding the statements to determine whether ‘the defendant’s will was overborne’ by improper police conduct.” *State v. Zinsmeyer*, 222 Ariz. 612, ¶ 14, 218 P.3d 1069, 1076 (App. 2009), *quoting Newell*, 212 Ariz. 389, ¶ 39, 132 P.3d at 843.

¶9 Here, nothing about the circumstances of the interview suggests Valenzuela’s statement was involuntary. Detective Hogan, who conducted the interview, testified that neither he nor his colleague had “coerce[d Valenzuela] in any way.” Valenzuela also testified at the suppression hearing, acknowledging the detectives had read him the warnings required by *Miranda* and confirming they had not threatened or

made any promises to induce him to talk to them. The trial court apparently found this testimony credible, and it is not for this court to reweigh the evidence on appeal. *See State v. Williams*, 209 Ariz. 228, ¶ 6, 99 P.3d 43, 46 (App. 2004).

¶10 Although Valenzuela asserts the timing of the interview was “designed to provide a psychological edge to induce [him] to make a statement,” the record does not support this argument. Hogan testified the detectives had gone directly to meet with Valenzuela after concluding the interview with Estrada because “[i]t was important to get to [them] as soon as [possible], based on the information [he] had and attempt to interview [them] to obtain information as [to] who killed [the victim].” Although Hogan admitted it was uncommon to conduct interviews “at midnight in the penitentiary,” he testified Valenzuela had not “appear[ed] . . . to be groggy,” had “appear[ed] alert,” and had been “polite and ready to go” at the time of the interview. And, nothing in the record suggests the detectives were aware of Valenzuela’s low IQ or that he had been taking prescription medications at the time of the interview. The trial court did not err in finding Valenzuela’s confession was voluntary or in denying the motion to suppress on that basis.

### **Expert Witness Testimony**

¶11 In a related argument, Valenzuela contends the trial court erred in precluding his expert witness, Dr. Perrin, from testifying at trial about “the voluntariness and reliability” of his statements to the detectives. We review a trial court’s ruling on the admissibility of expert witness testimony for an abuse of discretion. *State v. Davolt*, 207 Ariz. 191, ¶ 69, 84 P.3d 456, 475 (2004).

¶12 “If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” Ariz. R. Evid. 702. “Expert psychological testimony can be appropriate where there is a reasonable basis to believe the jury will benefit from the testimony and the testimony ‘explains recognized principles of social or behavioral science which the jury may apply to determine issues in the case.’” *State v. Hyde*, 186 Ariz. 252, 276, 921 P.2d 655, 679 (1996), *quoting State v. Lindsey*, 149 Ariz. 472, 473, 720 P.2d 73, 74 (1986). And “[e]xpert psychological testimony also can be appropriate to demonstrate general character traits.” *Id.* But, although an expert may testify generally about a defendant’s character traits, *see id.*, that expert “may not give an opinion as to the accuracy, reliability, or truthfulness of a witness,” *id.* Nor may the expert testify regarding “the actual mental state of a defendant at a given time.” *Id.*

¶13 On appeal, Valenzuela argues:

[W]hile Dr. Perrin could not have testified that Valenzuela was unable to make a voluntary statement because of his intelligence level, he should have been permitted to testify about the level of Valenzuela’s intelligence and the effect it might have had on his ability to understand his situation and to make a voluntary and reliable statement.

He apparently contends that in this general context, Dr. Perrin’s testimony was admissible under *Hyde*, and the trial court erred in precluding it. In his supplemental disclosure statement filed before trial, however, Valenzuela stated, “Dr. . . . Perrin may testify concerning the mental capacity of [Valenzuela] to understand the *Miranda*

warnings and the questioning to which he was subjected, while incarcerated, at 12:30 in the morning, by two Tucson detectives.” And on the first day of trial, before voir dire, the following exchange took place:

MR. PARRISH [defense counsel]: . . . I would call Dr. Perrin for the purpose of indicating that he tested the intellectual capacities of Mr. Valenzuela and found them to be, at the least, borderline and probably retarded.

What that means, though not case specific, I have not asked him for any cases, specific cases, is [Valenzuela] is incapable of blah, blah blah. That is not going to happen. And . . . [Valenzuela] will testify, as he did at the suppression hearing, that he was taking Seroquel and Prozac at the time, as he is now, in jail. And Dr. Perrin can testify as to what effect that has on him.

THE COURT: And the proffered relevance would be what?

MR. PARRISH: Would be with respect to the statement that he gave to the police.

THE COURT: Okay. Indicate that the request to call Dr. Perrin is denied.

Thus, to the extent Valenzuela’s intent was to have Dr. Perrin testify in a manner permissible under *Hyde*, he failed to make this intent clear below. Nor does the record indicate he made any other offer of proof to the trial court. *See* Ariz. R. Evid. 103(a)(2). And although Valenzuela attempts to clarify his meaning in his reply brief, we can only consider what was presented in the trial court. *See State v. Langley*, 91 Ariz. 228, 229, 371 P.2d 586, 586 (1962). We cannot say the court erred in precluding the testimony.

¶14 And even assuming error, it was harmless in any event. As we stated above, a necessary predicate to finding a statement involuntary is “coercion or improper

inducement” by the police. *State v. Ellison*, 213 Ariz. 116, ¶ 30, 140 P.3d 899, 910 (2006). And we have determined there was no improper conduct by the detectives. Additionally, the jury listened to the tape recording of Valenzuela’s statements. It therefore had the opportunity to determine for itself the voluntariness of those statements, and no expert testimony was necessary. *See State v. Bible*, 175 Ariz. 549, 588, 858 P.2d 1152, 1191 (1993) (error harmless “if we can say, beyond a reasonable doubt, that the error did not contribute to or affect the verdict”).

¶15 Nevertheless, Valenzuela contends *State v. Owen*, 96 Ariz. 274, 394 P.2d 206 (1964), and *Crane v. Kentucky*, 476 U.S. 683 (1986), support his argument that Perrin’s testimony should have been admitted. But these cases merely hold that, when a trial court has made a finding of voluntariness and admitted a defendant’s statement into evidence, the defendant may introduce evidence at trial “contradict[ing] the voluntary nature of the statement or confession,” and the “jury may . . . then in effect disagree with the judge, and reject the confession.” *See Owen*, 96 Ariz. at 277, 394 P.2d at 208; *see also Crane*, 476 U.S. at 688. Neither case permits a defendant to introduce inadmissible evidence for the purpose of challenging the voluntariness of his statement. *See Hyde*, 186 Ariz. at 276, 921 P.2d at 679 (expert may not testify regarding “the actual mental state of a defendant at a given time”). The trial court did not abuse its discretion when it precluded Dr. Perrin’s testimony.

### Disposition

¶16 For the reasons stated above, we affirm Valenzuela's convictions and sentences.

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge